

Before the  
FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of ) GC DOCKET NO. 92-52  
 )  
Reexamination of the Policy )  
Statement on Comparative )  
Broadcast Hearings )

To: The Commission

COMMENTS

Galaxy Communications, Inc., by its attorneys, hereby submits the following comments in response to the Commission's Notice of Proposed Rule Making in GC Docket No. 92-52, released April 10, 1992.

The Notice recognized that the spark for this proceeding came from the decision of the United States Court of Appeals for the District of Columbia Circuit in Bechtel v. FCC, Case No. 91-1112 (D.C. Cir. 1992), Petition for Writ of Certiorari pending sub nom. Galaxy Communications, Inc. v. FCC, Case No. 91-1744. Galaxy Communications and Susan Bechtel were the two appellants in that proceeding, which involves three applicants for a new FM station in Selbyville, Delaware.

The Commission has agreed "that the time for reexamination [its] comparative criteria is overdue." Notice at ¶ 4. That being the case, Galaxy submits that the Commission cannot rationally modify or even jettison the existing comparative criteria in

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this proceeding without applying its new and presumably more rational policy to existing adjudications, including the Selbyville, Delaware FM proceeding which gave rise to the Bechtel and Galaxy appeals.

That being said, Galaxy supports continued application of preferences for integration of ownership and management.

Of course, an integration preference only makes sense if the successful applicant is expected to implement and adhere to its integration proposal on a permanent basis. Any suggestion that one who has prevailed in a comparative proceeding which, like the Selbyville case, has taken over five years thus far, is free to sell the station in question and abandon its integration plan after the station in question has been on the air for one year, makes the entire process an absurdity. Indeed, Galaxy believes that part of the reason that the court granted Bechtel's appeal in this case was the insistence by counsel for the FCC at oral argument that winning integrated applicants are free to do just that. In this regard, re-examination of the comparative criteria should result in rejection of proposals like that of the prevailing applicant in the Selbyville case, Anchor Broadcasting Limited Partnership. Anchor's proposed general partner/general manager, while pledging to fulfill his integrated role for "the foreseeable future," defined that period as lasting only two or three years. See Galaxy Exceptions, filed September 6, 1989, at 4.

As Galaxy has maintained for years, the minority preference is unconstitutional, particularly as applied to prefer one party,

based on the color of the applicant's skin, despite an inferior coverage proposal. In such a case, the Commission in effect is saying that it is better for people in the difference area to receive no coverage at all than to receive service from a person of the "wrong" race. See Galaxy Petition for Writ of Certiorari at 11. However, because of the current congressional mandate, Galaxy recognizes that the FCC cannot spend any money to change its policies with respect to minority preferences. See Notice at ¶¶ 22-23.

No one, including minorities, is well served by a policy which allows minorities to be used as "fronts" to obtain broadcast licenses. Further, the Commission should consider evidence tending to show that general and limited partners in a limited partnership set up for the purpose of gaining maximum comparative credit will, in the "real world" communicate on matters relating to the day-to-day operation of the broadcast station. See Galaxy's Petition for Writ of Certiorari at 19. A refusal by an applicant to give testimony as to the likelihood that the limited partners will, in fact, communicate with the general partner about day-to-day operations should be taken as an admission that the limited partnership structure in question is not bona fide. To that extent, the Anax doctrine should be modified. Only under a system where "real world" considerations are given maximum weight can the Commission sustain the continued application of Anax. Otherwise, a limited partnership becomes a strained, unnatural

relationship of the type criticized by the court in the Bechtel case.

Galaxy supports the continued treatment of local residence and civic participation as qualitative enhancements of the integration criteria. Moreover, even if the Commission were to do away with the integration criterion, local residence and civic participation should be applied as separate, significant comparative factors.

An applicant's efficient use of the frequency is an important comparative criterion. An applicant who covers a population more than ten percent greater than its competitors should receive a substantial preference whether or not integration is retained as the primary comparative factor. Moreover, that preference should be strengthened in cases where the difference area receives fewer than five services.

Virtually all populated areas in the United States now receive at least five radio broadcast signals. Thus, to limit comparative coverage preferences to "slight" where the difference area already has five services is to trivialize the importance of comparative coverage. The Commission should make comparative coverage in such instances at least worthy of a "moderate" preference.

The point system proposed in Section III(c) of the Notice seems to be an attempt to fix an aspect of the comparative process that is not broken. In very few instances does the Review Board or full Commission have to reverse the assignment of weight for

various comparative factors by the Administrative Law Judges. Reversals more often turn on questions whether a party is entitled to any credit under particular factors at all due to a skewed ownership structure or for similar reasons relating to basic qualifications or quantitative integration credit.

Finally, Galaxy reiterates its strong belief that whatever changes in the comparative criteria are made in this proceeding should be applied to all cases involving applications still pending for final adjudication. Any other result would involve the application of an admittedly out-of-date scheme to present proposals where the public interest demands the Commission's best judgment, based on present policy, as to the best qualified applicant.

Respectfully submitted,

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